

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KING RANGE JR.,

Plaintiff,

**ANSWER TO COMPLAINT
AND COUNTERCLAIM**

v.

Case No. 1:18-CV-03450-JGK

217 EAST 26TH STREET LLC, 217 EAST 26TH
STREET NEWCO LLC AND TIPSY SCOOP LLC,

Defendant.

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Defendants 217 EAST 26TH STREET LLC, 217 EAST 26TH STREET NEWCO LLC
AND TIPSY SCOOP LLC, (hereinafter referred to individually as the "Defendant" and
collectively as the "Defendants"), by their attorney, Law Offices of Mitchell S. Segal, P.C., as and
for their answer to Plaintiff's Complaint (the "Complaint"), deny each and every allegation
contained in the Complaint except as admitted or otherwise qualified herein, and allege on
knowledge with respect to themselves and their own acts and on information and belief as to all
other matters that they:

1. Defendants deny the allegations contained in Paragraph "1" of the Complaint.

2. Defendants deny the allegations contained in Paragraph "2" of the Complaint.

3. Paragraph "3" of the Complaint asserts legal conclusions to which no answer is required.

To the extent an answer is required the Defendants aver that the Plaintiff seeks jurisdiction of
this Court.

4. Paragraph “4” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that the Plaintiff seeks jurisdiction of this Court.

PARTIES

5. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “5” of the Complaint, and therefore deny these allegations.

6. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “6” of the Complaint, and therefore deny these allegations.

7. Defendants admit the allegations contained in Paragraph “7” of the Complaint.

8. Defendants admit the allegations contained in Paragraph “8” of the Complaint.

9. Defendants admit the allegations contained in Paragraph “9” of the Complaint.

10. Defendants admit the allegations contained in Paragraph “10” of the Complaint.

ALLEGED ALLEGATIONS

11. Paragraph “11 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “11” of the Complaint.

12. Paragraph “12 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “12” of the Complaint.

13. Defendants deny the allegations contained in Paragraph “13” of the Complaint.

14. Defendants deny the allegations contained in Paragraph “14” of the Complaint.

15. Defendants deny the allegations contained in Paragraph “15” of the Complaint.

16. Defendants deny the allegations contained in Paragraph “16” of the Complaint.

17. Defendants deny the allegations contained in Paragraph “17” of the Complaint.

18. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “18” of the Complaint, and therefore deny these allegations.

19. Defendants deny the allegations contained in Paragraph “19” of the Complaint.

20. Defendants deny the allegations contained in Paragraph “20” of the Complaint.

21. Defendants deny the allegations contained in Paragraph “21” of the Complaint.

22. Defendants deny the allegations contained in Paragraph “22” of the Complaint.

23. Defendants deny the allegations contained in Paragraph “23” of the Complaint.

24. Defendants deny the allegations contained in Paragraph “24” of the Complaint.

25. Defendants deny the allegations contained in Paragraph “25” of the Complaint.

26. Defendants deny the allegations contained in Paragraph “26” of the Complaint.

27. Defendants deny the allegations contained in Paragraph “27” of the Complaint.

28. Defendants deny the allegations contained in Paragraph “28” of the Complaint.

29. Defendants deny the allegations contained in Paragraph “29” of the Complaint.

30. Defendants deny the allegations contained in Paragraph “30” of the Complaint.

31. Defendants deny the allegations contained in Paragraph “31” of the Complaint.

32. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “32” of the Complaint, and therefore deny these allegations.

33. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “33” of the Complaint, and therefore deny these allegations.

34. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “34” of the Complaint, and therefore deny these allegations.

35. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “34” of the Complaint, and therefore deny these allegations.

COUNT I ALLEGATION

36. Defendants repeat and reiterate all prior responses made herein in Paragraphs “1” thru “35” as if fully set forth herein.

37. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “37” of the Complaint, and therefore deny these allegations.

38. Paragraph “38” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “38” of the Complaint.

39. Paragraph “39” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “39” of the Complaint.

40. Defendants deny the allegations contained in Paragraph “40” of the Complaint.

41. Defendants deny the allegations contained in Paragraph “41” of the Complaint.

42. Defendants deny the allegations contained in Paragraph “42” of the Complaint.

43. Defendants deny the allegations contained in Paragraph “43” of the Complaint.

44. Defendants deny the allegations contained in Paragraph “44” of the Complaint.

45. Defendants deny the allegations contained in Paragraph “45” of the Complaint.

46. Paragraph “46” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “46” of the Complaint.

47. Defendants deny the allegations contained in Paragraph “47” of the Complaint.

48. Defendants deny the allegations contained in Paragraph “48” of the Complaint.

49. Defendants deny the allegations contained in Paragraph “49” of the Complaint.

50. Defendants deny the allegations contained in Paragraph “50” of the Complaint.

51. Paragraph “51” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “51” of the Complaint.

52. Defendants deny the allegations contained in Paragraph “52” of the Complaint.

53. Defendants deny the allegations contained in Paragraph “53” of the Complaint.

COUNT II ALLEGATION

54. Defendants repeat and reiterate all prior responses made herein in Paragraphs “1” thru “53” as if fully set forth herein.

55. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “55” of the Complaint, and therefore deny these allegations.

56. Defendants deny the allegations contained in Paragraph “56” of the Complaint.

57. Defendants deny the allegations contained in Paragraph “57” of the Complaint.

58. Defendants deny the allegations contained in Paragraph “56” of the Complaint.

59. Defendants deny the allegations contained in Paragraph “59” of the Complaint.

60. Defendants deny the allegations contained in Paragraph “60” of the Complaint.

61. Defendants deny the allegations contained in Paragraph “61” of the Complaint.

62. Defendants deny the allegations contained in Paragraph “62” of the Complaint.

63. Defendants deny the allegations contained in Paragraph “63” of the Complaint.

COUNT III ALLEGATION

64. Defendants repeat and reiterate all prior responses made herein in Paragraphs “1” thru “63” as if fully set forth herein.

65. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “65” of the Complaint, and therefore deny these allegations.

66. Paragraph “66” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “66” of the Complaint.

67. Defendants deny the allegations contained in Paragraph “67” of the Complaint.

68. Defendants deny the allegations contained in Paragraph “68” of the Complaint.

69. Defendants deny the allegations contained in Paragraph “69” of the Complaint.

70. Defendants deny the allegations contained in Paragraph “70” of the Complaint.

71. Paragraph “71” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “71” of the Complaint.

72. Defendants deny the allegations contained in Paragraph “72” of the Complaint.

73. Defendants deny the allegations contained in Paragraph “73” of the Complaint.

74. Defendants deny the allegations contained in Paragraph “74” of the Complaint.

75. Defendants deny the allegations contained in Paragraph “75” of the Complaint.

76. Defendants deny the allegations contained in Paragraph “76” of the Complaint.

77. Defendants deny the allegations contained in Paragraph “77” of the Complaint.

78. Defendants deny the allegations contained in Paragraph “78” of the Complaint.

79. Defendants deny the allegations contained in Paragraph “79” of the Complaint.

COUNT IV ALLEGATION

80. Defendants repeat and reiterate all prior responses made herein in Paragraphs “1” thru “79” as if fully set forth herein.

81. Defendants deny the allegations contained in Paragraph “81” of the Complaint.

82. Defendants deny the allegations contained in Paragraph “82” of the Complaint.

83. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “83” of the Complaint, and therefore deny these allegations.

COUNT V ALLEGATION

84. Defendants repeat and reiterate all prior responses made herein in Paragraphs “1” thru “83” as if fully set forth herein.

85. Defendants deny the allegations contained in Paragraph “85” of the Complaint.

86. Defendants deny the allegations contained in Paragraph “86” of the Complaint.

87. Defendants deny the allegations contained in Paragraph “87” of the Complaint.

88. Defendants deny the allegations contained in Paragraph “88” of the Complaint.

89. Defendants deny the allegations contained in Paragraph “89” of the Complaint.

90. Defendants deny the allegations contained in Paragraph “90” of the Complaint.

INJUNCTIVE RELIEF

91. Defendants deny the allegations contained in Paragraph “91” of the Complaint.

92. Defendants deny the allegations contained in Paragraph “92” of the Complaint.

93. Defendants deny the allegations contained in Paragraph “93” of the Complaint.

DECLARATORY RELIEF

94. Defendants deny the allegations contained in Paragraph “94” of the Complaint.

ATTORNEY FEES

95. Defendants deny the allegations contained in Paragraph “95” of the Complaint.

96. Defendants deny all statements and allegations contained therein, including any claim for relief set forth in Plaintiff’s “WHEREFORE” clause in the Complaint.

ADDITIONAL AVERMENTS

97. Defendants deny all claims and allegations in the Complaint not unequivocally admitted herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

98. The alleged barriers to accessing the Premises are not required to be removed and structural work is not required to be performed, because the removal of such barriers are not readily achievable, easily accomplishable, and able to be carried out without much difficulty or expenses within the meaning of Title III of the American with Disabilities Act.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

99. Plaintiff’s claims are barred, in whole or in part, for lack of standing and the capacity to sue.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

100. Plaintiff's claims which seek injunctive relief, are barred, in whole or in part, by unclean hands, including, but not limited to, on information and belief, that Plaintiff has engaged and continues to engage in a pattern and practice of allegedly visiting places of public accommodation in bad faith, without the intent of accessing goods and services and with sole purpose of filing lawsuits, including in respect of this actions.

AS AND FOR FOURTH AFFIRMATIVE DEFENSE

101. The Complaint fails to state a viable cause of action and is insufficient on it's face.

AS AND FOR FIFTH AFFIRMATIVE DEFENSE

102. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR SIXTH AFFIRMATIVE DEFENSE

103. Plaintiff failed to properly mitigate his alleged damages.

AS AND FOR SEVENTH AFFIRMATIVE DEFENSE

104. The property is not a "place of public accommodation" as stated in Title III of the Americans with Disabilities Act.

AS AND FOR EIGHTH AFFIRMATIVE DEFENSE

105. The modifications demanded by Plaintiff would fundamentally alter the nature of the facility or accommodations located at the property and are not readily achievable.

AS AND FOR NINTH AFFIRMATIVE DEFENSE

106. Plaintiff has not articulated a plausible proposal for barrier removal, the costs of which, facially, do not exceed its benefits.

AS AND FOR TENTH AFFIRMATIVE DEFENSE

107. The requested modifications would impose an undue burden on the Defendant.

AS AND FOR ELEVENTH AFFIRMATIVE DEFENSE

108. The removal of the alleged barriers would alter the nature of the Defendant's public accommodations pursuant to 42 U.S.C. §12182 (b) (2) (11).

AS AND FOR TWELFTH AFFIRMATIVE DEFENSE

109. The Defendants already provide access through readily achievable "alternative methods" including customer service and delivery.

AS AND FOR THIRTEENTH AFFIRMATIVE DEFENSE

110. Any alterations proposed by Plaintiff would be structurally impracticable pursuant to 28 CFR §36.402.

AS AND FOR FORTEENTH AFFIRMATIVE DEFENSE

111. Plaintiffs proposed alterations to "path of travel" are disproportionate to the overall alterations in terms of scope and cost pursuant to 42 USC §12183 (a) (2).

AS AND FOR FIFTEENTH AFFIRMATIVE DEFENSE

112. Any renovations did not constitute alterations.

AS AND FOR SIXTEENTH AFFIRMATIVE DEFENSE

113. Any alterations would be infeasible pursuant to ADAAG §4.1.6 (1) (j).

AS AND FOR SEVENTEENTH AFFIRMATIVE DEFENSE

114. Defendants have satisfied the maximum extent feasible standard.

AS AND FOR EIGHTEENTH AFFIRMATIVE DEFENSE

115. The Defendants are not the responsible party.

COUNTERCLAIM

116. This Court has original jurisdiction over claims arising under title III of the Americans with Disabilities Act, including claims for attorney fees under Title 42: Public Health and Welfare.

117. 42 USC §12205 and 28 CFR § 36.505 allows the prevailing parties reasonable attorney fees including litigation expenses and costs.

118. Defendants will incur attorney fees in defense of this frivolous litigation.

119. By reason of the foregoing, Defendants are entitled to judgment against Plaintiff for all attorney fees incurred in this action in an amount to be proven at trial, plus fees, costs, disbursements, interest and expenses.

WHEREFORE, Defendants respectfully request a judgment,

1. Dismissing the Complaint in its entirety, with prejudice;
2. Denying each and every demand, claim and prayer for relief contained in Plaintiff's

Complaint;

3. Awarding Defendants reasonable attorney fees and costs incurred in defending against this meritless action, and

4. For such other and further relief as to this Court believes just and proper.

Dated: Great Neck, New York
June 21, 2018

Respectfully submitted,

/s/ Mitchell Segal

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